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ELECTIONS TO FILL VACANCIES IN PRINCIPAL ORGANS: ELECTION OF A MEMBER OF THE INTERNATIONAL COURT OF JUSTICE

SECURITY COUNCIL
Fiftieth year

Memorandum by the Secretary-General

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I. INTRODUCTION

1. By a communication dated 28 September 1994, the Registrar of the International Court of Justice informed the Secretary-General of the death of Judge Nikolai Konstantinovitch Tarassov (Russian Federation) on that date and of the resulting occurrence of a vacancy in the Court. Judge Tarassov became a member of the Court on 9 December 1985 and was re-elected as from 6 February 1988. His term of office would have ended on 5 February 1997. According to Article 14 of the Statute of the Court, the vacancy shall be filled by the same method as that laid down for the regular election and the Secretary-General shall, within one month of the occurrence of the vacancy, issue the invitations for nominations provided for in Article 5. According to Article 5, the invitations for nominations have to be made at least three months before the date of the election, which shall, pursuant to Article 14, be fixed by the Security Council.

2. By a note dated 20 October 1994 addressed to the Security Council, the Secretary-General drew its attention to Article 14 of the Statute of the Court regarding fixing the date of the election to fill the vacancy in the International Court of Justice (S/1994/1188). Pursuant to Article 14 of the Statute of the Court, the Security Council decided by its resolution 951 (1994) of 21 October 1994 that the election to fill the vacancy should take place on 26 January 1995, at a meeting of the Security Council and at a meeting of the General Assembly at its forty-ninth session. Pursuant to rule 15 of its rules of procedure, the General Assembly, at its 93rd meeting, held on 20 December 1994, decided to include in the agenda of the forty-ninth session an additional sub-item under agenda item 15, "Elections to fill vacancies in principal organs", reading as follows: "(c) Election of a member of the International Court of Justice" (see A/49/239 and A/49/PV.93).

3. Pursuant to Article 5, paragraph 1, of the Statute of the Court, the Secretary-General, in a communication dated 21 October 1994, invited the national groups of States parties to the Statute of the Court to undertake the nomination of persons in a position to accept the duties of a member of the Court. The Secretary-General further requested that nominations should be received no later than 10 January 1995. A list of the nominations received by that date and the curriculum vitae of the candidate received are transmitted in separate documents to the General Assembly and the Security Council (A/49/828-S/1995/34 and A/49/829-S/1995/35, respectively). The name of the candidate will appear on the ballot papers to be distributed during the election.

4. Article 15 of the Statute of the Court provides that a member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term. The member elected to replace Judge Nikolai Konstantinovitch Tarassov will thus serve until 5 February 1997.

5. The present composition of the Court and the procedure in the General Assembly and the Security Council for filling the vacancy are described below.

II. COMPOSITION OF THE INTERNATIONAL COURT OF JUSTICE

6. The present composition of the International Court of Justice is as follows:

President: Mr. Mohammed Bedjaoui (Algeria)*

Vice-President: Mr. Stephen M. Schwebel (United States of America)*

Judges: Shigeru Oda (Japan)**
Roberto Ago (Italy)*
Robert Yewdall Jennings (United Kingdom of Great Britain and Northern Ireland)***
Gilbert Guillaume (France)***
Mohammed Shahabuddeen (Guyana)*
Andrés Aguilar Mawdsley (Venezuela)***
Christopher Weeramantry (Sri Lanka)***
Raymond Ranjeva (Madagascar)***
Géza Herczegh (Hungary)**
Shi Jiuyong (China)**
Carl-August Fleischhauer (Germany)**
Abdul G. Koroma (Sierra Leone)**

III. PROCEDURE IN THE GENERAL ASSEMBLY AND IN THE SECURITY COUNCIL

7. The election will take place in accordance with the following provisions:

(a) The Statute of the Court, in particular Articles 2 to 4, 7 to 12 and 14;

(b) Rules 150 and 151 of the rules of procedure of the General Assembly;

(c) Rules 40 and 61 of the provisional rules of procedure of the Security Council.

8. In accordance with General Assembly resolution 264 (III) of 8 October 1948, Nauru and Switzerland, which are parties to the Statute of the Court but not members of the United Nations, have been invited to participate in the General Assembly in electing members of the Court in the same manner as the States Members of the United Nations.

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* Term of office expires on 5 February 1997.

** Term of office expires on 5 February 2003.

*** Term of office expires on 5 February 2000.

9. On the date of the election, the General Assembly and the Security Council will proceed, independently of one another, to elect a member of the Court to fill the vacancy (Art. 8 of the Statute).

10. According to Article 2 of the Statute, judges are to be elected, regardless of their nationality, from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law. Article 9 requires electors to bear in mind not only that the person to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

11. The candidate who obtains an absolute majority of votes both in the General Assembly and in the Security Council will be considered as elected (Art. 10, para. 1, of the Statute).

12. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors. The electors in the General Assembly are all the Member States, together with the two non-member States mentioned in paragraph 8 above that are parties to the Statute of the Court. Accordingly, as at the date of the present memorandum, 94 votes constitute an absolute majority in the Assembly for the purpose of the Court election.

13. In the Security Council, eight votes constitute an absolute majority and no distinction is made between permanent and non-permanent members of the Council (Art. 10, para. 2, of the Statute).

14. Only those candidates whose names appear on the ballot papers are eligible for election. The electors in the General Assembly and in the Security Council will indicate the candidate for whom they wish to vote by placing a cross against the name on the ballot paper. Each elector may vote for only one candidate.

15. If in the first ballot in either the General Assembly or the Security Council no candidate receives an absolute majority, a second ballot will be held and balloting will continue in the same meeting until a candidate has obtained the required majority (rule 151 of the rules of procedure of the Assembly and rule 61 of the provisional rules of procedure of the Council).

16. When a candidate has obtained the required majority in one of the organs, the President of that organ will notify the President of the other organ of the name of that candidate. Such notification is not communicated by the President of the second organ to the members until that organ has itself given a candidate the required majority of votes.

17. If, upon comparison of the name of the candidate so selected by the General Assembly and by the Security Council, it is found that the result is different, the Assembly and the Council will proceed, again independently of one another, in a second meeting and, if necessary, a third meeting, to elect one candidate

by further ballots, the results again being compared after one candidate has obtained an absolute majority in each organ. If necessary, the above procedure will be repeated until the General Assembly and the Security Council have given an absolute majority of votes to the same candidate.

18. If, however, after the third meeting the vacancy still remains unfilled, the special procedure set out in Article 12 of the Statute of the Court may be resorted to at the request of either the General Assembly or the Security Council.